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**REMARKS**

Applicant again thanks the Examiner for the courtesy of a telephonic interview on September 3, 2008.

That interview and the present response were prompted by a Final Office Action dated July 1, 2008. In that Office Action, the Office rejected claims 1-16 under 35 U.S.C. 102(e) as being anticipated by US 6,708,604 to Deichler, Jr. (hereinafter "Deichler"). Since the time of that Office Action, Applicant has submitted to the Office an after-final response (on or about September 6), which included a Declaration under 37 CFR 1.131; and an Interview Summary (on October 24). This Declaration provides, in improved form, the same photographic showings that were previously submitted in response to rejections based on the Deichler reference. Applicant learned from remarks in the Final Office Action that the quality of the images had been significantly diminished by processing at the PTO and decided to submit clearer line drawings alongside the photographs to aid the Office in reviewing and recording the evidence. In summary, Applicant steadfastly maintains that she did reduce the invention to practice in this country well before the filing date of the Deichler reference and that the photographs and accompanying line drawings provide ample proof that, in every respect that Deichler is alleged to anticipate Applicant's claimed invention, these features were present and actively tested in the early implementation of the unit shown.

In an Advisory Action issued from the Office after Applicant's response, a notation, citing to 37 CFR 1.116(e), was made that the Declaration under 37 CFR 1.131 would not be entered because Applicant failed to show good and sufficient reasons why the affidavit was necessary and not presented earlier. Applicant believes that this was improper because substantially the same Declaration based upon the same showings had been submitted at the earliest opportunity and prior to the final rejection. Applicant believes that it would have been proper and productive for the Office to have carefully considered the Declaration after a final rejection, without any additional explanation as to its re-submission, and rendered a decision as would influence Applicant's next steps. Applicant's representative contacted the Office out of concern for this issue and the Examiner explained that he would take up the Declaration as well as any other arguments

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or amendments after the filing of an RCE which Applicant had informed the Examiner was likely. Applicant's representative acquiesced in view of the very short timeframe before incurring additional fees for time extensions and with a desire to have the Office fully and carefully consider the merits of the Declaration rather than rushing to decision at Applicant's insistence.

Turning now to the outstanding rejections in view of Deichler, Applicant provides the following remarks for consideration by the Examiner. The Office will note that, for clarity, Applicant has elected to replace the claims in a clean form to better express the invention rather than perform extensive amendments.

Claim 17 of the present application recites a "side having user-selected variable construction" in that it "is constructed of at least one panel selected by the user and wherein the panel is designed to be removably attached to the remainder of the frame." This aspect of Applicant's invention is explained in the Application, at least in paragraphs 0031 and 0033-0036. In the Application, Fig 2 and the accompanying description describe one exemplary way of forming panel edges so that panels used to construct a side of the device can be freely connected together or detached from one another, for example, side panel 104 and end panels 102 as shown in Figure 1. It is clear from the specification, for example, in paragraphs 0022 and 0027-0030, that this is not the only way to accomplish this degree of flexibility of attachment and that the invention should not be limited in this regard. Other figures in the application demonstrate the operation and the value of this variable construction aspect. In Figs 3, 4 and 5, the relative 'front' of the unit from the point of view depicted may be taken as a "side having user-selected variable construction." Comparison among these figures shows that side panels 304, 302 and 307 can each be placed at different positions or excluded from the front side entirely at the discretion of the user who assembles the unit.

Panels 304 and 302, shown to be included in one arrangement in Fig 3, are entirely excluded from the construction of the front of the unit in Fig 4. In Fig 5, panel 307 is replaced by panel 304 to lower the grill support height. Note also that panel 304 is shown in a different position in Fig 5 than it was in Fig 3, thus demonstrating variability in where a panel may be attached to the remainder of the frame structure. The user may

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choose which panels to use and where to put them in order to adapt the unit to different purposes, as these figures depict and the corresponding text explains.

In stark contrast, Deichler employs access doors 34, 36, 38 which are each permanently attached to the overall unit via a piano hinge 40 and explains the desirability of this permanent attachment to avoid loss of parts. (Deichler, col 3:14-15). The access doors of Deichler can only swung open or closed to provide access to various components within the structure. Deichler lacks any teaching that would enable a user to choose how to construct a variably constructed side, for example, by selecting whether to include or exclude (by not attaching during construction) a given panel. Much less, then, can Deichler accommodate a decision by a user to attach panels in a different vertical order or to freely select the point of attachment for each panel that is selected for inclusion in the assembled unit. Applicant has explained (Application, para. 0031) the manner in which this flexible construction afforded by the presently claimed invention is usefully and purposefully employed by a user to adapt the unit for a variety of cooking uses. Deichler clearly lacks this flexibility in construction.

Consequently, the Deichler reference does not anticipate Applicant's independent claim 17, at least in failing to teach a "side having user-selectable variable construction ... constructed of at least one panel selected by a user from among a plurality of available panels and wherein the panel is designed to be removably attached to the remainder of the frame." Applicant contends that claim 17 is patentably distinct and allowable over the Deichler reference and respectfully requests consideration and allowance of this claim.

Furthermore, Applicant respectfully submits that dependent claims 18-27 are allowable as well, at least by virtue of inheriting this same recited limitation from claim 17 and in view of the arguments presented above. Furthermore, each of these dependent claims are novel and allowable over Deichler as follows:

Claim 18 addresses ready-for-use construction of the variably constructed side so that the device is prepared for use in a desired configuration and operates usefully while employing fewer than the complete set of panels that could otherwise be included on the side. One example of this arrangement is seen in Fig 4 of the Application. Whereas Fig 3 of the drawings, shows that panels 304, 302 and 307 can all be used at the same time to

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construct a side that is substantially completely enclosed, Fig 4 shows that, in an alternative, usefully functioning arrangement, panels 304 and 302 can be entirely excluded from that side, and indeed excluded from the entire assembly and perhaps used meanwhile for alternate purposes as explained in para. 0030. (Note that these figures show a duplicate set of panels along the backside which happens to include similar panels 304 and 302. The relative 'backside' of the unit in these figures happens to also be a variably constructed side. In Fig 4, the 304 and 302 appearing on the backside remain in place as in Fig 3, but the panels 304 and 302 along the front are truly eliminated from the overall construction in Fig 4.)

Deichler fails to teach any ability to remove, or to exclude from the constructed unit, a panel used to form and enclose a side of the in-use structure. The Examiner's remarks in previous correspondence and during a recent telephonic interview indicate a perception that a 'panel' recited in Applicant's claims corresponds to an 'access door' of Deichler. Deichler fails to recognize any value in providing this ability to achieve a variety in-use configurations by removing or excluding panel members (doors) that would substantially enclose a side of the device during use. Accordingly, Applicant contends that Deichler does not anticipate claim 18 and respectfully requests consideration of these points and allowance of claim 18.

Claim 19 specifies that the panel selected by the user as part of constructing the side having user-selectable variable construction supports a transverse member (such as a grill per para. 0054 – 0055 in the Application) for suspending an item above the heat source within the frame. Again, referring to the Examiner's reliance on the access doors of Deichler to fulfill Applicant's panels in a variably constructed side, it is evident in Deichler that support of a grill 68, as well as other elements firebox 72 and water tray 70, are supported solely by guides rails 66 or other slideable engagements coupled to the sidewalls. The access 34, 36 38 of Deicheler do not have any features which engage or support these transverse members. In contrast, Applicant depicts in Fig 1 and Figs 3-6 and in detail in Fig 7A, the manner in which a grill rests directly upon the edges of panels from which the side has been constructed. In fact, in some possible embodiments, as explained in para. 0055, this engagement may lead to a cooperative reinforcement of the structure wherein the grill lends rigidity or support by virtue of directly contacting the panels. Deichler lacks any teaching of, or acknowledgement of the potential value of,

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having a panel used to construct and enclose a variably-constructed side also participating in supporting a transverse member. For at least this reason, Applicant submits that claim 19 is allowable over Deichler and respectfully requests allowance of claim 19.

Claim 20 expresses the manner in which a panel is designed to engage the remainder of the frame when it is chosen as a member from which to construct the side having user-selectable variable construction. Claim 20 requires that the panel be attached to the remainder of the frame by at least two different edges of the panel when used. When the panel is not installed, then the panel is entirely excluded, that is, not coupled by any edges to the remainder of the frame. This differs from the access doors of Deichler which, at any time, are either closed and latched (attached at two points) or are open (attached via a piano hinge along one edge). As stated before, there is no option in Deichler wherein an access door is completely removed. In accordance with Applicant's teachings, a panel is either included (installed) or entirely excluded from the construction. Claim 20 does not allow for a status of a selected panel wherein it is installed but only along one edge. Applicant requests allowance of claim 20 over Deichler by virtue of these arguments and in view of claim 20 depending on claim 1 which is itself novel over Deichler.

Claim 21 relates to the manner of attachment of a panel when installed as part of the side having user-selectable variable construction, namely that the panels is attached to at least two different parts of the remainder of the frame. As with claim 20, a panel once installed maintains attachment with at least two different portions of a frame or is otherwise completely excluded from the construction. The access doors of Deichler are hingedly attached and can be opened during operation of the unit. Deichler's access doors exclusively couple by either 1 or 2 distinct points of attachment (hinge side and latch side) whereas Applicant's panels are at any time coupled via either zero or two points. When a panel is installed per Applicant's invention, the panel is coupled for example as shown in Fig 1 where the one side panel 104 attaches to two different end panels 102. These end panel edges are two different components of what may be considered the 'remainder of the frame' comprising both end panels 102 and the backside panel (also labeled 104 due to the symmetry). Applicant requests allowance of claim 21

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over Deichler by virtue of these arguments and in view of claim 21 depending on claim 1 which is itself novel over Deichler.

Claim 22 recites "wherein a position at which the panel selected by the user is attached to the remainder of the frame is selectable by the user from among more than one possible such position of attachment." As mentioned above, a comparison of Fig 3 and Fig 5 in the Application shows panel 304 being placed in at least two different positions for achieving different in-use constructions of the device. In a sense, panel 304 may be said to have replaced panel 307 or to be interchangeable with panel 307. In comparing these two drawings, one may also observe that, on the 'backside' of the unit, the panel 307 has changed positions. The backside is also of variable construction in this exemplary embodiment. The panels forming the backside are shuffled or resequenced bottom-to-top to properly support the grill in coordination with the selected arrangement of one or more panels along the front. Even though the backside remains completely closed by the same three panels (302,304,307) in both Figures 3 and 5, the order of the panels, that is the specific placement of each panel, is alterable by the user constructing the unit.

In stark contrast, Deichler employs access doors 34, 36, 38 which are each permanently attached to the overall unit via a piano hinge 40. The access doors of Deichler can only swing open or closed to provide access to various components within the structure. Deichler lacks any teaching that would allow enable a user to choose how to construct a variably constructed side, for example, by selecting whether to include or exclude (by not attaching during construction) a given panel that substantially encloses, or contributes to enclosing the side where the panel is installed. Much less, then, can Deichler accommodate a decision by a user to attach panels in a different vertical order, to have one panel replace another or to freely select the point of attachment for each panel that is selected for inclusion in the assembled unit. Applicant has explained (Application, para. 0031) the manner in which this flexible construction afforded by the presently claimed invention is usefully and purposefully employed by a user to adapt the unit for a variety of cooking uses. Deichler clearly lacks this flexibility in construction. Applicant requests allowance of claim 22 over Deichler by virtue of these arguments and in view of claim 22 depending on claim 1 which is itself novel over Deichler.

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Claim 23 depends from claim 22 and pertains to the effects of having a variable position of attachment for a panel as a constituent of a side having user-selectable variable construction. Claim 23 recites that the position of attachment of the panel changes at least one of the following attributes: a proportion of the side that is substantially enclosed, which portion of the side is substantially enclosed by the panel, or a height at which a transverse member, supported by at least one panel, is supported within the frame.

The effect that panel position has upon one or more of these parameters in turn influences how a user selects panels to achieve a particular in-use configuration of the device. For example, if one seeks to bake an item, a more-or-less complete enclosure along with greater distance from the heat source is desirable. This compels for an arrangement of one or more panels that completely enclose the variably constructable side and to support the grill at sufficient distance above the heat source so that the item is heated evenly from all sides by convection rather than much more directly from below. Fig 3 in the application reflects this sort of construction. On the other hand, if one wants to grill an item or bring a liquid to a boil, a much closer proximity to the heat source may be desired, as in Figure 5, and the degree of enclosure above the grill may be unimportant for heat transfer and more preferably left open for easy access to the items being heated. Claim 23 finds support in Applicant's disclosure at least by referring to the various arrangements of panels 302, 304 and 307 along the front of the unit in Figures 3, 4 and 5. In Fig 3, panel 304 is in a top-most position where it is contributing to completely enclosing the front side. In Fig 5, panel 304 is in a different position to achieve a much lesser degree of enclosure. In fact, moving panel 304 to the bottom position enables a lesser proportion of enclosure than would even be achievable by having panel 307 remain in that position as shown in Fig 4. Moving panel 304 around as shown also affects which portion of the side is enclosed by that panel. Finally, in Fig 5, panel 304 is seen to directly support the grill and establish its height above the heat source. The placement of panel 304 in Fig 5, accomplishes a lower grill height than is achievable in either Figs 3 or 4. For these reasons, it is apparent that changing the position of attachment for panel 304 relative to the remainder of the frame structure indeed affects at least one of "a proportion of the side that is substantially enclosed, which portion of the side is

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substantially enclosed by the panel, or a height at which a tranverse member, supported by at least one panel, is supported within the frame." As explained before, the Deichler teachings offer no ability to change position of attachment of any side-enclosing members, much less doing so for the purpose of controlling these attributes towards a particular desired in-use construction. For at least this reason, Applicant submits that claim 23 is allowable over Deichler and respectfully requests allowance of claim 23.

Claim 24 concerns a variable attribute of the constructed device , the attribute being affected by the quantity of panels used in constructing the variably constructed side. Claim 24 recites that the variable attribute may be at least one of a proportion of the side that is substantially enclosed or a height at which a tranverse member, supported by one of the panels, is supported within the frame. This aspect of Applicant's teachings is supported at least by reference to Figs 3 and 4 and comparison thereof. In Fig 3, three panels 302,304 and 307 are shown to collectively enclose the 'front' side of the structure. In Fig 4, panels 320 and 304 are removed from the front side, leaving only panel 307. In comparison to Fig 3, Fig 4 depicts a lesser proportion of enclosure of the front side by the use of only one panel instead of all three. Furthermore, Fig 3 depicts a grille 108 being supported upon the stack of panel 302 atop panel 307. The height of grill 108 is established by the combination of the height of panel 302 and the height of panel 307. In Fig 4, the grill 108 is supported only by panel 307 and is thus at a lower height above the heat source than it was in Fig 3. This demonstrates a situation where changing the number of panels installed in the side affects the height of the grill (transverse member). Note that these properties would still hold true even if each of the panels offered the same installed height. For example, if each of three panels contributed three inches in height, then one could fully enclose a nine inch high side using three panels or use a lesser number of panels to achieve a six inch coverage or a three inch coverage. Additionally, the grill height could be set by the number of these equally sized panels stacked beneath the grill. In many situations where multiple panels are use, the grill height can vary independently of the proportion of enclosure by selection of which panel the grill rests directly upon and whether any panels are installed above the level where the grill is supported.

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Deichler lacks any teaching as to varying the number of access doors (panels) that may be included in constructing the heating unit. Consequently, there is no ability to vary the proportion of enclosure by changing a number of access doors attached. Furthermore, in Deichler, the grill and other members that are supported within the structure are support by slides in the fixed sidewalls rather than by contact with the access doors, so that even if the access doors were variable in quantity, they would have no influence on grill height.

Applicant respectfully holds, therefore, that Deichler does not anticipate Applicant's claim 24 and that this claim should be allowed.

Claim 25 expresses having available, for use in construction of the variably constructed side, panels of differing heights from which a user can select to include in the construction. The user's choice from among differing sizes allows the user to achieve desirable attributes in degree of side enclosure and/or height at which a transverse member is supported. This aspect is exemplified in Applicant's application, for example, by comparison of Fig 4 to Fig 5. In Fig 4, panel 307 encloses roughly half of the front side area and is supporting the grill 108 at a certain height above the heat source. In Fig 5, panel 307 has been replaced by a noticeably narrower panel 304, which reduces the proportion of the front side that is substantially enclosed and, in this case with the grill resting atop panel 304, this panel replacement also lowers the grill position. Although both the proportion of enclosure and grill position are affected in this example by selection of panel 304 versus 307, there are other scenarios where grill position is independent of side enclosure, such as when panels are added above the level of the grill.

The teachings of Deichler do not allow for a user to select different heights of access doors to included or excluded in cosntructing the device. Furthermore, as stated above, the access doors provided by Deichler do not contact the grill or other transverse members and therefore do not affect the placement height of such elements. Thus, Deichler fails to anticipate having a "designated side is selectively constructed by a user to include a panel of specific height by which the user adjusts at least one of: how much of the side of user-selectable variable construction is substantially enclosed or at what height a transverse member is supported within the frame." Applicant respectfully requests consideration on these points and allowance of claim 25.

Claim 26 relates to ability of the device to accommodate employing, in the construction of the variably constructed side of the device, at least two panels having different heights and to enable rearranging the order of the panels so that a user can vary proportion of enclosure and/or grill height. This capability is reflected in Applicant's specification (0035-0036) and drawings (Fig 4 and Fig 5). In Fig 4, note the bottom-to-top order of panels 302,304 and 307 along the backside of the structure. A panel 307 is placed at the bottom first to support the grill at a certain height commensurate with the placement of a similarly sized panel on the front side. In Fig. 5, the backside is still completely enclosed by the same three panels as before (though panel 302 is occluded by lid 310), but the order of panels has been changed. On the backside, panel 304 (occluded by the grill) is now placed on the bottom of the 'stack' to provide level support for the grill in cooperation with a similarly sized panel on the front side. Panel 307 is then placed above panel 304. Thus, the arrangements in Fig 4 and fig 5 achieve variation in where the grill is supported by changing the vertical ordering of the panels. (Note that the front side could have remained fully enclosed as in Fig 3 and that restacking the panels along both front and backsides would allow the grill to be supported at different heights. For example, if panels 302 is placed at the bottom below panel 307 then the grill could be supported very near the heat source.)

In contrast to Applicant's claimed invention, the access doors of Deichler are permanently attached and are unable to accommodate vertical reordering to adapt the unit for different purposes. Furthermore, as stated above, the access doors provided by Deichler do not contact the grill or other transverse members and therefore do not affect the placement height of such elements. Thus, Deichler doubly fails to anticipate the claimed aspect that "in attaching the first and second panels to the remainder of the frame, the first panel is placed above the second panel to support the transverse member at first height and the first panel is placed below the second panel to support the transverse member at a second height different from the first height." Applicant respectfully requests allowance of claim 26 in view of these remarks.

Claim 27 recites that "the side having user-selectable variable construction comprises first and second panels, both concurrently attached to the remainder of the frame, and a transverse member is user selectable to either be directly supported by the first panel in accordance with a first user-selectable configuration or to be directly

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supported by the second panel in accordance with a second user-selectable configuration."

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The pending Application demonstrates this aspect for example by comparison of Fig 3 and Fig 4. In Fig 3, the backside of the unit is shown to comprise, from bottom to top, panels 307, 302 and 304 with the grill resting directly atop panel 302 in the stack. In this arrangement, the height of the grill is determined by the sum of the height of panel 302 plus the height of panel 307. Turning to Fig 4, panels 307, 302 and 304 remain stacked along the backside in the same order as in Fig 3, but the grill 108 is resting directly upon panel 307. The grill height in this instance is determined solely by the height of panel 307. In these examples, panels 302 and 307 may be viewed as the recited first and second panels both concurrently attached to the remainder of the frame. It is clear that, at the discretion of the user during construction of the variably constructed backside of the unit, the first panel or second panel can be used to directly contact and support the grill. This is beneficial as a mechanism for allowing the user to vary grill height as desired.

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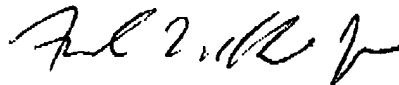
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CONCLUSION

Applicant respectfully requests that the Examiner reconsider the bases of rejection in the Final Office Action dated July 1, 2008 in view of the amendments and arguments Applicant presents herewith. Applicant also respectfully requests due consideration of the Declaration under 37 CFR 1.131 filed previously to the extent it may address any bases of rejections by which the Deichler patent might have been considered by the Examiner to anticipate the invention and the early reduction to practice of the presently claimed invention by the Applicant. Applicant believes that a full and complete response has been made to the Final Office Action, as such, the present application should be considered for allowance. If the Examiner believes for any reason that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided. Prompt and favorable consideration of these remarks are respectfully requested.

Respectfully submitted,



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